

**TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE**



FISCAL NOTE

HB 156

February 15, 2011

SUMMARY OF BILL: Authorizes the Governor to employ special counsel, subject to a conflict of interest inquiry, to defend, prosecute or initiate any action on behalf of the State when the Attorney General and Reporter chooses not to act and to pay special counsel just compensation as determined by the Governor. Requires the Attorney General and Reporter to exercise discretion to defend, prosecute, and initiate any action, on behalf of the State, upon written request from the Governor. If the Attorney General and Reporter chooses to represent the state in such an action, the Attorney General and Reporter is prohibited from accepting a settlement unless approved by the Governor. If the Attorney General and Reporter chooses not to represent the State in such an action, the Attorney General and Reporter is required to send a written report to the Governor within 30 days certifying the reasons for the decision.

ESTIMATED FISCAL IMPACT:

Other Fiscal Impact – Cases in which the Governor elects to hire outside counsel without the agreement of the Attorney General will result in an increase in state expenditures ranging from \$5,000 to \$500,000 per case for legal fees and expenses, depending on the nature, complexity, and duration of each case. The circumstances under which this scenario may arise are not known and the cost of this bill each year therefore cannot reasonably be determined.

Assumptions:

- Cases may arise in which the Governor elects to hire outside counsel without the agreement of the Attorney General. Tenn. Code Ann. § 8-6-106 currently requires a joint decision by the Governor and Attorney General. This bill therefore may result in the hiring of outside counsel in more cases than under current law. The circumstances under which this scenario may arise are speculative and cannot be specified in a fiscal note in the absence of a specific determination by the Governor that counsel should be hired. According to the Attorney General, the cost of outside counsel in any case depends on many factors and cannot reasonably be predicted. Notwithstanding these limitations, the cost of outside counsel in each case would range from \$5,000 to \$500,000 or more in fees and expenses, depending on the nature, complexity, and duration of the case.
- Prohibiting the Attorney General and Reporter from accepting settlements without the approval of the Governor and requiring the Attorney General and Reporter to send a written report to the Governor when electing not to represent the State will not result in a significant increase to state expenditures.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in blue ink, reading "James W. White". The signature is fluid and cursive, with the first name "James" written in a smaller, more compact script than the last name "White".

James W. White, Executive Director

/lsc